



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

U.I.L. 4943.01-00 No Third Party Contacts

Release Number: **201229011**
Release Date: 7/20/2012
Date: April 11, 2012

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Fund =
Holding =
Company =
Contributor =

X =
Y =
Z =

Year 1 =
Year 2 =

Dear

This is in response to your request for an extension under §4943(c)(7) of the Internal Revenue Code for an additional five-year period for disposing of excess business holdings held in a donor advised fund.

You are exempt under §501(c)(3) and are classified as a sponsoring organization within the meaning of §4966(d)(1) of a donor advised fund known as Fund. In Year 1, you received x shares of common stock of Holding as a bequest from Contributor that was credited to Fund. You currently own y shares of such stock. The advisors to Fund are four children of Contributor and had included his spouse until her death.

Contributor, who died almost a year before Year 1, was a substantial shareholder of Holding, a family-owned company that owns all of the outstanding stock of Company and subsidiaries, a forest products corporation with sawmill operations. Holding has two classes of voting stock and one class of non-voting stock. All stock is under a restrictive stock transfer agreement

among shareholders which, in effect, severely limits the transferability and liquidity of the shares of stock. You own approximately 11.88 percent of the voting stock of Holding, with the rest owned as follows: 37.85 percent by Fund's advisors; 42.74 percent by a marital trust for the benefit of Contributor's spouse, which currently is in post-death administration after her death; and 7.53 percent by various trusts for the benefit of children of Fund's advisors.

Since receiving the x shares in Year 1, Holding redeemed 40 percent of your shares in Year 1 and Year 2, leaving you with a current balance of y shares of stock. Because the forest products industry is in the midst of a very significant downturn, and Holding has had operating losses as a direct result of the current economic climate, Holding has been unable to fulfill its obligation to redeem the remainder of the voting stock.

You represented that none of the other shareholders of the stock is willing or able, for legal or financial capacity reasons, or both, to purchase the shares of Holding you own. Also, it would be impossible to sell the shares to an unrelated third party except at a price substantially below fair market value because of the undesirability of being a minority shareholder in a family-owned business and subject to the restrictive stock transfer agreement. As such, the only practical buyer of the stock is Holding, which will redeem all your shares at the rate of z shares per year until all shares have been redeemed, with final redemption occurring before expiration of the requested five-year extension. Your state Attorney General has reviewed and approved the plan, finding it reasonable and appropriate under the circumstances.

Applicable law:

Section 4943(a)(1) imposes a tax on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period a tax equal to ten percent of the value of such holdings.

Section 4943(c)(1) defines the term "excess business holdings" to mean, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Section 4943(c)(2) provides that the permitted holdings of any private foundation in an incorporated business enterprise are (i) 20 percent of the voting stock, reduced by (ii) the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(6) provides that a private foundation shall have a five-year period beginning on the date of acquisition of excess business holdings to dispose of such holdings, where the acquisition or increase in excess business holdings is not the result of a purchase by the private foundation or a disqualified person.

Section 4943(c)(7) provides that the IRS may extend for an additional five years the initial five-year period under §4943(c)(6) for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if:

(A) The foundation establishes that:

- (i) it made diligent efforts to dispose of such holdings during the initial five-year period, and
- (ii) disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings;

(B) Before the close of the initial five-year period:

- (i) the private foundation submits to the IRS a plan for disposing of all of the excess business holdings involved in the extension, and
- (ii) the private foundation submits the plan to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the IRS any response the private foundation receives during the five-year period; and

(C) The IRS determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Section 4943(e)(1) of the Code provides that for purposes of this section, a donor advised fund (as defined in section 4966(d)(2)) shall be treated as a private foundation.

Section 4943(e)(2) of the Code provides that in applying this section to any donor advised fund, the term "disqualified person" means, with respect to the donor advised fund, any person who is (A) described in section 4966(d)(2)(A)(iii), and (B) a member of the family of an individual described in subparagraph (A).

Section 4966(d)(1) of the Code defines the term "sponsoring organization" to mean an organization described in §170(c) that is not a private foundation and maintains 1 or more donor advised funds.

Section 4966(d)(2)(iii) provides that the term "donor advised fund" includes a fund or account with respect to which a donor (or any person appointed or designated by such donor) has advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor.

Analysis

You are subject to §4943, which imposes a tax on the excess business holdings of private foundations. Generally, under §4943(c)(2)(A), a private foundation is permitted to hold twenty percent of the voting stock in a business enterprise with any excess constituting excess business holdings. However, if a private foundation acquires holdings in a business enterprise other than by purchase (e.g., by gift) which causes the foundation to have excess business holdings, then the interest of the foundation in such business enterprise shall be treated as held by a disqualified person (rather than the foundation) for a five-period beginning on the date such holdings were acquired by the foundation, under §4943(c)(6)(A).

Under §4943(c)(7), the Internal Revenue Service may extend the initial five-year period for disposing of excess business holdings that you currently hold for an additional five years if you establish that: (i) you made diligent efforts to dispose of such holdings during the initial five-year period, and disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings, (ii) before the close of the initial five-year period you submit to the Internal Revenue Service and Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to your disposition of the excess business holdings involved a plan for disposing of all of the excess business holdings involved during the extension and (iii) the Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

As a sponsoring organization and owner of the assets of Fund, which is treated as a private foundation for purposes of §4943, Fund's holdings and, thus, your holdings of the outstanding voting stock of Holding, represent excess business holdings for purposes of §4943. You must entirely dispose of your excess business holdings within five years of receipt pursuant to §4943(c)(6) unless you obtain approval for an extension for an additional five-year period as set forth in §4943(c)(7). You submitted your request for an additional five-year period to dispose of your unusually large bequest from Contributor prior to the expiration of the initial five-year period for disposing of such excess business holdings. Your request fully described your plan, including the diligent steps you have taken to dispose of the stock within the initial five-year period and represented that such disposition has not been possible except at a price substantially below fair market value by reason of the size and complexity of your holdings. Also, you submitted your plan to dispose of the stock by redemption within the additional five-year period to your state Attorney General, who approved the plan, finding it reasonable and appropriate under the circumstances.

Based on the information submitted, we have determined that your plan to dispose of your outstanding shares of stock of Holding to eliminate any excess business holdings within an additional five-year period can reasonably be expected to be carried out.

Ruling

Under §4943(c)(7), the period during which you may dispose of your Holding stock is extended for the additional five-year period that you requested.

This ruling will be made available for public inspection under §6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any

section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Mary J. Salins
Manager, Exempt Organizations
Technical Group 4

Enclosure
Notice 437